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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.  | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------|------------------|
| 10/646,198  | 08/22/2003  | William G. Parsons   | J-3874               | 9041             |
| 28165   | 7590        | 06/28/2004           | EXAMINER             |                  |
| S.C. JOHNSON & SON, INC.<br>1525 HOWE STREET<br>RACINE, WI 53403-2236 |             |                      | NICOLAS, FREDERICK C |                  |
|   |             |                      | ART UNIT             | PAPER NUMBER     |
|   |             |                      | 3754                 |                  |

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/646,198

Applicant(s)

PARSONS ET AL.

Examiner

Frederick C. Nicolas

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3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-18 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/22/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

I- Species A: Figures 1-3.

II- Species B: Figure 4.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the

case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with the applicant's attorney Mr. David Houser on 6/25/2004 a provisional election was made without traverse to prosecute the invention of Species A: Figures 1-3, claims 1-11,13-18. Affirmation of this election must be made by applicant in replying to this Office action. Claim 12 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-7,10-11,13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Kahn 3,628,733.

Kahn discloses a nozzle (10) for a spray dispenser as seen in Figure 1, which comprises a nozzle body having an inlet suitable to be positioned in communication with at least one reservoir (12) having liquid material to be dispensed, an outlet end (24), and at least one conduit (16) there between, the outlet end having two outlet pathways (14) capable of being in communication with the inlet as seen in Figure 3, each of the two outlet pathways extending along its own longitudinal axis and having its own outer end as seen in Figure 3, the outer end of one of the outlet pathways being truncated at an angle that is non-perpendicular to the longitudinal axis of that outlet pathway adjacent that outer end, and the outer end of the other of the outlet pathways being truncated at an angle relative to its longitudinal axis adjacent its outer end which is different from the truncation angle for the first of the outlet pathways as seen in Figure 3, wherein the longitudinal axis of a first of the two outlet pathways adjacent its outer end is essentially parallel to the longitudinal axis of the second of the two outlet pathways adjacent its outer end as seen in Figure 3.

The device shown by Kahn will perform the method recited in claims 14-15 during normal operational use of the device.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kahn 3,628,733 in view of Zimmerhake 5,730,332.

Kahn has taught all the features of the claimed invention except that the nozzle body is a molded single piece plastic structure. Zimmerhake teaches the use of a nozzle body (10) being molded of a single piece plastic structure (col. 1, ll. 65-67 onto col. 2, ll. 1-4), a skirt (26a).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize Zimmerhake's teaching onto Kahn's nozzle body as taught by Zimmerhake in (col. 1, ll. 65-67 onto col. 2, ll. 1-4), in order to utilize the natural shrinkage that occurs during the molding process.

Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Kahn's nozzle body lower portion by providing the skirt (26a) of Zimmerhake as taught in (col. 3, ll. 6-16), in order to mount the nozzle body on an aerosol container.

8. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kahn 3,628,733.

Kahn has taught all the features of the claimed invention except that the streams remain visually distinguishable for at least 5cm after the streams are emitted from the nozzle body, even if neighboring portions of the streams have begun to be in contact with each other within that distance, as well as the claimed limitation of claims 17-18.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Kahn's streams to be visually distinguishable for at least

5 cm and/or 15 cm, and/or 25cm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. As per MPEP 2144.05

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hanson et al. 5,249,747, Crampton et al. 5,890,661, Morrison 5,080,286, Hanson et al. 5,088,649, Lund et al. 5,358,179, Frangos 3,406,913, Macguire-Cooper 3,568,933, Stern et al. 6,536,633, Yamamoto 4,790,485, Braun 3,724,763, Malich 5,785,256, Crampton et al. 6,086,812, Baudin 5,516,045, Bauer 4,185,777, Gehres et al. 3,767,125, Zimmerhake 5,914,085 and Barlics 4,277,004 disclose other types of nozzle for a spray dispenser.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (703)-305-6385. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mancene L. Gene, can be reached on 703-308-2696. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

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information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN  
June 25, 2004

A handwritten signature in black ink, appearing to read 'F. Nicolas', followed by the date '6/25/04' written in a similar cursive style.

Frederick C. Nicolas  
Patent Examiner  
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